

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

LAURA LEE NEVA,
Charging Party/Appellant

Case # 0102014211

-v-

REMAND ORDER

JIM BATES,
Respondent

Charging Party, Laura Lee Neva, filed a complaint with the Department of Labor and Industry (Department), which alleged discrimination on the basis of gender (sexual harassment). Following an informal investigation, the Department determined that a preponderance of the evidence supported Neva's allegations. The case went before the Hearings Bureau of the Department of Labor and Industry, which held a contested case hearing, pursuant to § 49-2-505, MCA. The hearing officer issued a Decision on November 25, 2011. The hearing officer determined that the Department did not have jurisdiction over Neva's claims of sexual harassment because Neva had neither alleged nor proven a violation of the Montana Human Rights Act. Consequently, the hearing officer dismissed Neva's claim against Jim Bates for lack of jurisdiction.

Laura Lee Neva filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on March 21, 2012. Jim Bates appeared *pro se* and presented oral argument on his own behalf. Patricia Peterman, attorney, appeared and presented oral argument on behalf of Laura Lee Neva.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision, but may not reject or modify the findings of

fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *Admin. Rules of Mont.* 24.9.123(4). A factual finding is clearly erroneous if it is not supported by substantial evidence in the record; if the fact-finder misapprehended the effect of the evidence; or if a review of the record leaves the Commission with a definite and firm conviction that a mistake has been made. *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3rd 284, ¶ 39. The Commission reviews conclusions of law to determine whether the hearing officer's interpretation and application of the law is correct. *Denke*, ¶ 39.

DISCUSSION

After careful consideration of the complete record and the argument presented by the parties, a majority of the Commission determines the hearing officer's application of the Montana Human Rights Act, specifically § 49-2-305, MCA, to the facts of this case was incorrect. Consequently, the Commission remands the case to the Hearings Bureau for further proceedings in accordance with this Remand Order.

The hearing officer concluded Jim Bates, the owner and lessor of a property in Absarokee, Montana, sexually harassed Laura Lee Neva, a woman who leased space from Bates for a commercial art gallery. *Hearing Officer Decision (Decision)*, p. 4. However, the hearing officer determined that the Montana Human Rights Act does not prohibit discrimination when it occurs in the course of a commercial leasing business relationship. *Decision*, p. 5. Therefore, the hearing officer declared the Department lacked jurisdiction over the otherwise unlawful sexual harassment perpetrated by Bates against Neva. *Decision*, p. 5. The Commission disagrees.

“The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental disability, age, or national origin is recognized as and declared to be a civil right.” *Section 49-1-102(1), MCA*. More specifically, § 49-2-305(1)(b), MCA, declares, in pertinent part:

It is an unlawful discriminatory practice for the owner, lessor, or manager having the right to sell, lease, or rent a housing accommodation or *improved or unimproved property* or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or *property* to a person because of sex, marital status, race, creed, religion, color, age, familial status, physical or mental disability, or national origin;

(b) to discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or *property*;

....

(d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing accommodation or *property* because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin; [Emphasis added.]

....

The caption of § 49-2-305, MCA, reads: “Discrimination in housing – exemptions.” The Commission notes that a caption or catchline of a statute in the Montana Code Annotated may not be construed as part of the legislative text but exists only for the purpose of convenience, orderly arrangement, and information, unless specifically and expressly adopted as part of the law by the Legislature.¹ *Section 1-11-103(5), MCA*. In this case, the Montana Legislature did not expressly adopt the caption to become part of § 49-2-305, MCA. Therefore, the Commission concludes that the reference to “housing” in the caption of § 49-2-305, MCA, neither enlarges nor limits the meaning of the statute.

¹ Only when incorporating the Uniform Commercial Code as part of Montana Code Annotated did the Legislature explicitly adopt the captions or catchlines as part of the law. *Section 30-1-109, MCA*.

The language of § 49-2-305, MCA, clearly references both “improved or unimproved property” in addition to housing accommodations. Therefore, the Commission finds statutory interpretation is necessary to determine whether the Montana Legislature intended § 49-2-305, MCA, to prohibit discrimination in a commercial property transaction, as presented by the instant case.

Statutory interpretation, the goal of which is to give effect to the legislature’s intent, begins with the text of the statute. *Giacomelli v. Scottsdale Ins. Co.*, 2009 MT 418, ¶ 18, 354 Mont. 15, 221 P.3d 666 (citing *Smith v. Burlington N. & Santa Fe Ry.*, 2008 MT 225, ¶ 22, 344 Mont. 278, 187 P.3d 639; *Fliehler v. Unisured Employers Fund*, 2002 MT 125, ¶ 13, 310 Mont. 99, 48 P.3d 746. When the legislature has not defined a statutory term, the Montana Supreme Court considers the term to have its plain and ordinary meaning. *Giacomelli*, ¶ 18 (citing *Czajkowski v. Meyers*, 2007 MT 292, ¶ 24, 339 Mont. 503, 172 P.3d 94). To determine the meaning of a statutorily undefined term, the Court may consider dictionary definitions, prior case law, and the larger statutory scheme in which the term appears. *Giacomelli*, ¶ 18 (internal citations omitted). Additionally, similar statutes from other jurisdictions may be considered and legislative history may be used for guidance in interpreting a statute. *Giacomelli*, ¶ 18 (citing *Gannett Satellite Info. Network, Inc. v. State*, 2009 MT 5, ¶ 20, 348 Mont. 333, 201 P.3d 132; *Mont. Sports Shooting Assn. v. State*, 2008 MT 190, ¶ 25, 344 Mont. 1, 185 P.3d 1003).

The Commission finds the plain and ordinary meaning of “property” includes all types of real estate, personal possessions and characteristics. *Merriam Webster’s Collegiate Dictionary* (10th Ed., 1995) defines property as “something owned or possessed; a piece of real estate.” Not surprisingly, *Black’s Law Dictionary* (5th Ed., 1997) presents an exhaustive, multi-paged definition of the term “property,” describing the varieties of tangible and intangible “valuable

rights and interests” that are “peculiar or proper to any person, that which belongs exclusively to one.”

The question before the Commission of whether the term “property,” as it appears in § 49-2-305, MCA, includes commercial property. On appeal, Neva pointed to legal authority from Michigan as guidance and argued that to hold that the Montana Human Rights Act does not extend to commercial property leasing would leave commercial tenants without a remedy for unlawful discrimination.

The case of *Lucy v. Amoco*, 582 F. Supp. 1168 (E.Mich. 1984) required the federal District Court to interpret the terms “real property” and “real estate transaction” found in the Michigan statute that prohibits housing discrimination. The *Lucy* case involved Amoco’s refusal to lease an automobile service station to the female heirs of the prior lessee. Amoco argued that the Michigan statute, which prohibits age and sex discrimination (sexual harassment) in real estate transactions, applied only to housing transactions. The District Court disagreed and noted that freedom from discrimination is a recognized civil right in Michigan. The Court found the Michigan Legislature intended to prohibit discrimination in all real estate transactions and used the word “housing” in the Michigan statute as short hand for transactions involving all commercial, residential and unimproved property. *Lucy*, 582 F. Supp. at 1171.

The Commission finds nothing in the plain language of § 49-2-305, MCA, restricts the prohibition against gender discrimination solely to real estate transactions involving domiciles. The terms “property” and “unimproved property” appear throughout Montana’s housing discrimination statute, which clearly signals that the Legislature intended to encompass in the prohibition against unlawful discrimination the “sale, lease or rental” of all manner of real estate. The Commission further finds the *Lucy* case to be persuasive guidance. The District Court

determined that the term “real estate” in the Michigan statute encompassed commercial, residential and unimproved property. The Commission determines that the Montana Legislature’s choice of the words “property and unimproved property” in § 49-2-305, MCA, to be similarly inclusive.

The hearing officer found that Bates’ sexual harassment of Neva was “severe, persistent and patently unwelcome.” *Decision*, p. 4. Due to Bates’ unrelenting sexual harassment, the hearing officer also concluded that Neva was denied an opportunity to fully utilize the commercial art gallery space that Neva leased in the building owned by Bates. *Decision*, p. 2-3.

The Commission affirms the hearing officer’s finding that Bates perpetrated unlawful sexual harassment against Neva in the course of the commercial leasing relationship. The Commission, however, reverses the hearing officer’s conclusion that Bates’ sexual discrimination does not constitute a violation of the Montana Human Rights Act, specifically § 49-2-305, MCA, and that the Department lacks jurisdiction to adjudicate Neva’s complaint. The Commission concludes that § 49-2-305, MCA, prohibits unlawful discrimination in commercial property transactions, as well as all other real estate transactions. Consequently, the Commission remands this case to the Hearings Bureau for further proceedings.

The Commission further notes that Neva disputed the hearing officer’s finding that a valid leasing agreement had never been reached between Bates and Neva because the premises were never tenantable and no written lease had been executed. *Decision*, p. 2 Neva argued that a verbal contract to lease had been established between herself and Bates on or about July 1, 2009, and that the gallery opened for business for one day on July 25, 2009. Moreover, Neva argued, the parties agreed that the arrangement for payment of rent between lessor and lessee credited Neva’s financial and sweat-equity contributions to the repair of the building as rent for

the month of August 2009. Therefore, the Commission directs the hearing officer on remand to revisit the issue of constructive eviction and to determine an appropriate damage award pursuant to § 49-2-506, MCA.

ORDER

IT IS HEREBY ORDERED, that the appeal of Laura Lee Neva is granted. The Commission remands this case to the Hearings Bureau for further proceedings in accordance with this Remand Order. The hearing officer shall have the discretion to conduct additional fact-finding, as the hearing officer finds necessary, to determine an appropriate damage award.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 2-4-702 and 49-2-505, MCA.* This review must be requested within 30 days of the date of this order.

DATED this 30th day of March, 2012.

/lminich/
L.M. Minich, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 30th day of March, 2012.

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